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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/038,468	01/03/2002	Christoph Hehrlein	2869	8101
26822	7590	10/12/2006	EXAMINER	
WALTER A. HACKLER 2372 S.E. BRISTOL, SUITE B NEWPORT BEACH, CA 92660-0755				THANH, LOAN H
ART UNIT		PAPER NUMBER		
		3763		

DATE MAILED: 10/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

88

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/038,468	HEHRLEIN ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	LoAn H. Thanh	3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 22 May 2006.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 29-34 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 29-34 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 03 January 2002 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

## **DETAILED ACTION**

### ***Election/Restrictions***

The Examiner is allowing the shift to species of figure 3 as requested and pointed out by Applicant in his response of 05/22/06.

### ***Response to Amendment***

The specification objection, drawing objection and claim objections have been withdrawn in view of applicant's amendment and response filed 05/22/06.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 29-30,33-34 are rejected under 35 U.S.C. 102(b) as being anticipated by Grady ( USPN 5,084,011).

Grady teaches a method comprising the steps of oxygenating the blood or tissue with a catheter which includes an oxygenated fluorocarbon solution and changing the temperature of the solution to a temperature between about 0 and 4 degrees Celsius by the refrigeration unit 60 and exposing the device to that fluid. The substrate is considered to be the catheter , syringe or cannula . The means for modulating can be interpreted as the lumen wall of the catheter or the refrigeration unit. The means for exposing is considered to be the lumen wall of the tubular element.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 29-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rowe ( US 6,146,358) in view of Paradis ( US 5,334,142).

Rowe teaches a balloon having a substrate/ controlled release carrier on the surface which incorporates a therapeutic agent to be delivered to the internal tissue of the patient. The means for modulating and exposing is considered to be the inflation lumen of the catheter or the wall or the reservoir. As best understood by the examiner the means of Rowe is able to perform the function of the means that applicant has claimed. ( i.e. The structure allows the fluid to come into contact with the substrate/ coating/wall which is considered to be equivalent structure to the balloon catheter of applicant. It is well known that the temperature at which to deliver into a patient would be one of the body's temperatures which are between 0 and 50 degrees Celsius.

Rowe discloses several therapeutic agents , however Rowe is silent to the therapeutic agent to be an elutable oxygenated fluorocarbon solution. Paradis discloses delivery of oxygen carrying fluid (fluorocarbon ) for infusion. Paradis further disclose that any agent that is demonstrated as effective when administered

intravenously may be more effective when administered to the heart by the balloon catheter. It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the therapeutic agent of Rowe with the oxygenated fluorocarbon solution as disclosed by Paradis as a substitution of different therapeutic agents for treatment with a balloon catheter.

***Response to Arguments***

Applicant's arguments with respect to claims 1-16,19 -28 have been considered but are not persuasive. Both Grady and Paradis discloses teachings of oxygenated fluorocarbon solutions. The rejection is being maintained.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Art Unit: 3763

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LoAn H. Thanh whose telephone number is (571) 272-4966. The examiner can normally be reached on Mon. - Fri. (First Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick Lucchesi can be reached on (571) 272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



LoAn H. Thanh  
Primary Examiner  
Art Unit 3763

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